

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

J & W SANITATION COMPANY, INC.)	
)	
_____)	CASE NO.95-509
)	
FAILURE TO COMPLY WITH KRS 278.230(3))	

O R D E R

On November 20, 1995, the Commission ordered J & W Sanitation Company, Inc. ("J & W Sanitation") to show cause why it should not be penalized for failing to comply with KRS 278.230(3). A hearing in this matter was held on December 18, 1995. Neither J & W Sanitation nor its representative appeared.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. J & W Sanitation owns, controls, operates, and manages a subdivision treatment facility in Hopkins County, Kentucky which is used for and in connection with the treatment of sewage for the public for compensation. It is therefore a utility subject to Commission jurisdiction. KRS 278.010(3)(f).

2. KRS 278.230(3) directs every utility, when required by the Commission, to file with it any report or other information that the Commission reasonably requires.

3. Commission Regulation 807 KAR 5:006, Section 3(1), requires every utility to file with the Commission on or before March 31 of each year a financial and statistical report of its utility operations for the preceding calendar year on forms furnished by the Commission.

4. On or about January 3, 1995, the Commission mailed to J & W Sanitation two copies of its standard form for the annual financial and statistical report with a letter of instruction to complete the forms for its 1994 calendar year operations.

5. On March 29, 1995, J & W Sanitation requested an extension of time in which to file its annual financial and statistical report.

6. The Commission granted J & W Sanitation's request for an extension and extended the deadline for filing its annual financial and statistical report to April 30, 1995.

7. As of May 1, 1995, J & W Sanitation had neither filed its annual financial and statistical report nor requested a further extension of time.

8. On May 5, 1995, the Commission mailed a letter to J & W Sanitation which advised that the required report was past due.

9. Commission Staff subsequently contacted Clyde Fowler, J & W Sanitation's president, by telephone and advised him that the required reports were past due.

10. On November 27, 1995, J & W Sanitation was served with a copy of the Commission's Order of November 20, 1995 by certified mail.

11. On December 14, 1995, J & W Sanitation filed an annual financial and statistical report for its 1994 calendar year operations.

12. Where the act which a utility is required to do is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance. See Re Dyke Water Company, 55 PUR3d 342 (Cal. P.U.C. 1964).

13. J & W Sanitation has willfully failed to submit reports in the time period required by Commission Regulation 807 KAR 5:006, Section 3(1).

14. J & W Sanitation has willfully failed to comply with KRS 278.230(3).

15. J & W Sanitation should be assessed a penalty of \$125 for its willful failure to comply with KRS 278.230(3).

IT IS THEREFORE ORDERED that:

1. J & W Sanitation is assessed a penalty of \$125 for its willful violation of KRS 278.230(3).

2. J & W Sanitation shall pay the assessed penalty within 20 days of the date of this Order. Payment shall be made by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to Office of General

Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane,
P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 31st day of January, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

E. J. H. B.
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director